IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 494 of 2005

Satya Narian Sharma

Versus

State & another

Date of decision :- 3rd August, 2005.

A.F.R. (Approved for Reporting)

Not approved for reporting

Date :- August 3, 2005. Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the Judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.494 of 2005

Satya Narian Sharma
S/o Sri Chauth Mal Sharma
R/o Guhala
P.S. Neemka Thana
District Seekar, Rajasthan .....Applicant

Versus

1. State of Uttaranchal
2. Sri Gauri Shankar Mohta
   Manager, Geeta Bhawan
   Swargashram
   Rishikesh, Dehradun .....Respondents

Date:- 3rd August, 2005

Hon'ble J. C. S. Rawat, J.

1. Heard Sri Pankaj Miglani learned counsel for the applicant and learned A.G.A. for the State.

2. The petition under section 482 Cr.P.C. has been filed for quashing the order dated 8.4.2005 passed by the Chief Judicial Magistrate, Haridwar in criminal case No.1394/2005, whereby the learned Magistrate took cognizance against the applicant under section 420, 406 I.P.C.

3. The factual position in a nutshell is that the respondent No.2-Gauri Shankar Mehta lodged an FIR on 15.1.2005 alleging therein that the applicant was the in-charge of Geeta Press. The applicant used to keep all the accounts of the shop. When the verification was done on 1.4.2004 by the representative of Geeta Press i.e. Anil Tripathi, who found the loss of books worth Rs.6,078/- and the stock was found to be Rs.13,52,889/- instead of Rs.13,58,667/-. Thereafter, when the physical verification was done on 31.10.2004

it was found that the applicant embezzled a sum of Rs. 3,22,815.90 When the inquiry was made, the applicant admitted that he has taken the money and assured the complainant that he will return the same. The police investigated the matter and submitted the chargesheet on 19.2.2005 before the Chief Judicial Magistrate, Haridwar. Thereafter, the learned Magistrate took cognizance against the applicant under section 420, 406 I.P.C. vide order dated 8.4.2005. Feeling aggrieved by this, the applicant preferred the present petition.

4. The learned counsel for the applicant contended that this is case of civil liability not a criminal liability. The applicant has admitted the factum of embezzlement and he has stated that he will deposit the entire amount. To this effect, an agreement was also made between the parties. As such, the case comes within the purview of 'civil liability'. The learned A.G.A. refuted the contention and contended that the embezzlement as well as the mens-rea is there and as such the case comes within the purview of section 420, 406 I.P.C. The applicant dishonestly misappropriated the amount and there is sufficient mens-rea in this case. The instant case does not fall under the category of civil nature only. The respondent had an option to seek redressal in the competent court to recover the money.

5. The learned counsel for the applicant contended that the police have not taken other documents, which are relevant for just and proper decision of the case. The learned A.G.A. refuted the contention and contented that the statements of the witnesses have already been recorded and the trial court can only decide as to whether the evidence at this stage against the applicant

is sufficient or not. The power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}.**

6. It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

7. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

8. In view of the aforesaid decisions, the petition is devoid of merit. Therefore, the petition is dismissed.

(J. C. S. Rawat, J.)

Dated 03.08.2005

LSR